

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
NO. 3:12-CR-00188-FDW

Defendant Alan Boyd Donta Barnett moves the Court to continue the trial in the above-captioned matter (Doc. No. 349), which is currently scheduled to commence on Monday, March 18, 2013.

Defendant asserts that on February 25, 2013, the United States provided him eleven (11) disks containing 25,000 pages of new discovery, comprised of “wire taps, surveillance records, witness statements, and other source documents that would be relevant at trial.” Doc. No. 349 at paragraph 6.

The Government responds that the “vast majority of information” provided on February 25, 2013, was merely telephone records in toll format and that the “bulk of the information” was previously provided in discovery via the Title III wiretap information. Doc. No. 353 at paragraph 2. The new evidence is not new evidence at all but “data provided in a different and easier to read format.” Id.

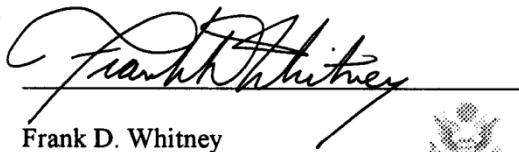
The Government does acknowledge that it turned over five new FBI 302s (Reports of Interviews) of co-conspirators who recently entered guilty pleas and copies of seized jail mail.

The Court finds that five new FBI 302s and the seized jail mail do not justify a continuance of a multi-defendant trial which has had a peremptory setting since December 20, 2012.

As to the toll and wiretap records, however, the Court ORDERS both the Defendant Barnett and the United States to submit verified filings by noon Friday March 18, 2013, as to whether this is merely old evidence produced in a different format or is actually new, material evidence against the Defendant.

Even if the Defendant makes a showing that this is actually new, material evidence against him, the Court's likely remedy is to limit the Government's use of the new evidence at trial rather than to continue the trial.

Signed: March 4, 2013



Frank D. Whitney
United States District Judge

